IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092(MBK)
Plaintiff,	.	
v.	.	
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000,	.	
Defendants.	.	Tuesday, April 18, 2023
	.	10:00 a.m.

TRANSCRIPT OF HEARING ON
MEMORANDUM OF LAW IN SUPPORT OF MOTION BY MOVANT ANTHONY HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE AUTOMATIC STAY, SECOND AMENDED EX PARTY TEMPORARY RESTRAINING ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAIVING THE FOURTEEN-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(a)(3) [DOCKET 71]; AND DEBTOR'S MOTION FOR AN ORDER (I) DECLARING THAT THE AUTOMATIC STAY APPLIES OR EXTENDS TO CERTAIN ACTIONS AGAINST NON DEBTORS OR (II) PRELIMINARILY ENJOINING SUCH ACTIONS AND (III) GRANTING A TEMPORARY RESTRAINING ORDER EX PARTE PENDING A HEARING ON A PRELIMINARY INJUNCTION [ADVERSARY DOCKET 2]; AND MOTION TO SEAL; AND SERVICE PROCEDURES MOTION

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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first-day hearing that a fundamental objective of this debtor is to resolve all claims of all talc clients. Admirable objective, but that doesn't mean they qualify for bankruptcy.

And that's the lesson learned in part from the Third Circuit opinion. And I'll have other lessons in that opinion, but that's one of the lessons from the Third Circuit opinion. That objective alone is not grounds for the filing of a bankruptcy.

To bring us back to what we are here today to talk about, there's no debate. LTL's covered by the stay. What we are only talking about today is LTL non-debtor affiliates. We're talking about J&J, JJCI, Holdco. I don't know what all the names are at this point in time, Your Honor. They've changed since the first case. But that's what we're talking about. Whether 362 allows this Court to extend the stay or whether under 105 Your Honor has the power to impose a stay to prevent claims from going forward against non-debtor affiliates.

And in order to get the preliminary injunction, I just want to bring us all back to the four elements that the people who want the injunction and stay must prove. There's no burden of proof on people opposing the preliminary injunction to prove bad faith. I think that was implied in Mr. Gordon's opening remarks. There's no objective. There's no burden today to do that.

The burden is totally on the movant. And the movant must prove likelihood of success on the merits that it is in the public interest that when you balance the harms, Your Honor should extend the stay or the preliminary injunction. And you have to look at the irreparable harm to the ability to reorganize. That's the way that they have phrased it.

In my opening remarks, I'm only going to focus on two or three of these points. There will be a lot more in the closing after Your Honor has a chance to hear the evidence. Likelihood of success on the merits, remember, this is likelihood of success from the non-debtor affiliates. Not LTL, non-debtor affiliates.

So first we have the issue that we've been talking about and that I've talked about during the first-day hearing, number of people in favor of the plan. This is not a situation where we have an RSA that the actual creditors have signed on to. We have a PSA where attorneys have signed on to it, And as has been mentioned, the attorneys admit it's still up to their clients to vote on the plan.

One of the things we tried to determine during discovery and Your Honor will hear evidence of this is to what extent has the number been I'll call it de-duping. I don't know what else to call it. I speak from experience in Imerys. I can tell you how many claims were knocked out because more than one attorney thought that they represented the same party.

Sometimes it's because the party actually did sign more than one agreement. It happens.

And there were thousands if not tens of thousands of votes that were knocked out because of that. But nobody here is de-duped. I don't know whether the number is 60, 70, 80. I don't know if it's 30 or 40. I don't know what it is. But we also don't know how many of those people will ever be able to vote on the plan because we don't know how many of those people have medical records that support the fact that they should be voting on this plan, or how many of these people can show that they had exposure to talc products. And that's based on the deposition testimony of people like Mr. Watts and Mr. Pulaski.

The other issue that comes up on likelihood of success on the merits is will this case survive a jurisdictional challenge. Will this case survive a motion to dismiss? And the third issue is if this case survives the challenge, will there be a channeling injunction and a case where LTL and J&J tell us there's no asbestos in their product, or will there be a third-party release in this plan to cover the non-debtor affiliates?

That's an important point, Your Honor. It's an issue that I'm sure Your Honor's well aware how it's pending in front of the Second Circuit yet and hopefully they'll rule any day now in the Purdue case. But likelihood of success on the merits, we need to focus on the non-debtor affiliates. And

that last point is very important.

I'm also going to talk about the public interest here. I'll allow plaintiffs' counsel and Committee counsel to focus on the balance of harms. But I need to talk about the public interest here, Your Honor.

The Third Circuit, we are well aware of, stated that good intentions of resolving talc claims wasn't enough. There needed to be financial distress. And it found that financial distress wasn't present on the record before it.

And I've heard during depositions, I've heard during argument that the Third Circuit gave LTL the path forward on how to file the second bankruptcy. Your Honor, I think it's in the public interest that we make clear the Third Circuit, in no uncertain terms, gave LTL a path forward to turn around two hours and eleven minutes later to file a bankruptcy case after it went through the machinations that it did.

And it's important to look at where Footnote 18 appears in the Third Circuit's opinion. Third Circuit said, quote, while LTL inherited massive liabilities, its call on assets to fund them exceeded any reasonable projections available on the record before us.

The, quote, attenuated possibility, end quote, that top litigation may require it to file for bankruptcy in the future does not establish its good faith as of the petition date. At best, the filing was premature.

A And the McDonald Worley PC firm, it's listed on your latest petition. It's not on your earlier petition, correct?
A Again, I'd have to check. I believe -- if you represent that's true, I'll believe that.
Q Okay. The Pulaski Kherker firm, it's listed on your latest petition but not on your earlier petition, correct?
A Again, same answer. I could check if you'd like me to. But I'll take -- I trust your representation.
Q The Reub Stoller & Daniel firm, listed on your latest petition, not your earlier petition, correct?
A Again, same answer. I will defer to your representation. I'd have to check to make sure.
Q The Watts Guerra firm, listed on your latest petition, not your earlier petition, correct?
A Same -- same answer.
Q Okay. Now all the firms I just mentioned, they're law firms with which LTL has entered into plan support agreements, right?
A I would have to check the plan support agreements to confirm what you said. I haven't memorized all the firms.
Q Will you accept my representation on that?
A If you say so. But again, I'd have to go check to --
Q Okay.
A -- to confirm.
Q All right. Now let's go back and look at Exhibit 1, the

petition filed in LTL-1. You see the Ashcraft & Gerel firm listed there? Right at the second firm listed.

A I'm sorry. I'm trying to get to the list.

Q Sure. It's on Page 16 of 22.

A Okay.

Q Do you see the Ashcraft & Gerel firm?

A I do see that.

Q That firm was a member of the TCC, the Talc Claimants Committee, in the first bankruptcy case. Wasn't it?

A I actually don't -- don't know what the composition of the TCC was.

Q Okay. Okay. You didn't include that firm in your bankruptcy petition this time around, did you?

A Again, I'll take your word for it. I can check if you'd like me to.

Q The Karst Von Oiste firm that's listed, I think it's, let's see, number 17. That firm was a member of the Talc Claimants Committee in LTL-1, wasn't it?

A Again, I don't know the composition of the committee.

Q You didn't list that firm here, did you?

A Again, I'll take your -- I'll take your word for it unless you want me to check.

MR. JONAS: I'll tell you what. Your Honor, may I approach?

THE COURT: Sure.

MR. JONAS: Your Honor, I don't have enough copies. So I'll just introduce it. Hopefully, it will refresh the witness' recollection. It's an order appointing the Official Committee of Talc claimants, again LTL-1.

THE COURT: Okay.

BY MR. JONAS:

Q Mr. Kim, you're looking at -- okay. You're looking at a list. And you'll see it's from the North Carolina bankruptcy case. And it has the representatives. And I appreciate that the law firms themselves are not members. But they have clients that are members of the Talc Claimants Committee and they're representatives.

And you'll see on there, just to confirm what I've represented to you, you see on there the Ashcraft & Gerel firm, right?

A I see this on this list, yes.

Q And you see the Karst Von Oiste firm, don't you?

A I do see that on the list.

Q You see Weitz & Luxenberg?

A I do see that on this list, yes.

Q Do you see Kazan McClain?

A I do see that on the list.

Q And the Levy Konigsberg firm, do you see that on there?

A I do.

Q Okay. Now all of the firms I just mentioned that you,

Q Do you know if Mr. Murdica had any medical information with respect to the underlying claimants?

A Again, just like every other claim including claims -- claimants represented by members of the TCC, we don't ask for that type of material. We don't vet it. There's no need to do it at this juncture. When it comes down to voting, whether it's a valid vote, when it comes down to payment, whether we actually have to pay these people, that's when it makes sense to do that process.

It doesn't make sense to take the effort, the cost, the time at this juncture when all we're asking for is an indication of support for a plan. We did not pay these --

THE COURT: The answer's no. The answer is no.

MR. JONAS: Sorry, Your Honor.

BY MR. JONAS:

Q Last question on this topic, and I promise I won't -- Mr. Kim, of these lists you have of claimants, you don't know if there's any duplicate claimants on those lists, do you?

A No. But what I do know is that when we -- when going through this process, we asked these plaintiffs' lawyers to only give us names of people who they are the main counsel for.

Q That was a no?

A That's a no.

Q Okay. Okay. Okay. In the first day declaration you filed in the first bankruptcy case on October 4th, 2021, you

state, and I'll quote, the design of the 2021 corporate restructuring insures that the debtor has at least the same, if not greater, ability to fund talc-related claims that -- and other liabilities as old JJCI had before the restructuring. You said that in your first declaration, right?

A I did.

Q And the first funding agreement, I may call it funding agreement one versus funding agreement two, the first funding agreement was available to LTL, the debtor here, both in and outside of bankruptcy, correct?

A Based upon the facts and law that we knew at the time, yes.

Q That's a yes?

A At that time, yes.

Q Under the funding agreement one, there was total value of around, let me -- I think you said around $60 billion available to LTL, correct?

A At the time of the filing, there was.

Q Today, under funding agreement two, the total value available to LTL is tens of billions of dollars less than under funding agreement one, correct?

A That's assuming that funding agreement one was still enforceable and not void or voidable. If the Third Circuit had not rendered the opinion the way it had, then that would be true.

Q Sir, very, very important question, okay? Yes or no. Today, under funding agreement two, the total value available to LTL is tens of billions of dollars less than was available under funding agreement one. Yes or no?

A That is not true.

Q So you think today, LTL-2 -- no, strike that. You think that the debtor today under funding agreement two has available to it to satisfy talc claims around $60 billion?

A No, that's not what I said. What I said was that it's not the -- not tens of billions of dollars less because you have to take into account that because of the Third Circuit decision, funding agreement two was rendered void or voidable, and there's material risk that it was not enforceable. So therefore, if you're trying to compare those two, I think that statement would not be true.

Q I don't want to compare anything. I just want -- let's -- I'll tell you what. Let's do it this way. Funding agreement one, the debtor had $60-odd billion available to it to satisfy my client's claims, right?

A Prior to the Third Circuit decision, I would say yes.

Q Great. Today, how much does the debtor have available to it under its funding agreement to satisfy talc claims?

A I think there's a calculation about what the value of -- an internal valuation of the principal assets of Holdco which is around $30 billion, plus the amounts that LTL has through

(indiscernible).
Q Well, pick a number. Is it 30, is it 40? I don't know. You're the chief legal officer of the debtor, right? Let me ask you a few questions. You're the chief legal officer of the debtor, right?
A I am.
Q Now, do you understand that these funding agreements, they're the most valuable asset of the debtor, right?
A That's true.
Q Do you understand how critically important they are to talc victims who the only way they're going to be able to recover effectively is under the funding agreement?
A I do.
Q Okay. So when you negotiated funding agreement two, you had that in mind how critically important it was, right?
A Well, when we agreed to funding agreement two, I did. Yes.
Q So did you think to yourself I better make sure I get at least $60 billion of value for these people because I'm a debtor in Chapter 11. I have fiduciary duties to these people. And I better make sure I get them at least the same amount of value. Did that go through your mind?
A No, because at the time that -- after the Third Circuit decision, the -- it was clear, there was consensus reached that the first funding agreement was void or voidable, at least the

J&J guarantee part of that. And so when we were entering into funding agreement two, we took out this risk of enforceability and put in a new agreement that would benefit all the parties.

Q Sir, do my clients have the same amount that they can recover from under funding agreement two as under funding agreement one? Yes or no?

A No, because of the Third Circuit decision, not because of what we did.

Q It's the Third Circuit's fault?

MS. BROWN: Your Honor, I object. It's argumentative.

THE COURT: Sustained.

BY MR. JONAS:

Q Are you saying that the Third Circuit is responsible for my clients having tens of billions of dollars less that they can recover from?

MS. BROWN: Same objection, Judge.

MR. JONAS: I'd like to know, Your Honor.

THE COURT: Overruled.

THE WITNESS: What I'm saying is that when the Third Circuit made its decision, one of the ramifications of the decision was that it frustrated the purpose of the first funding agreement, rendering it void or voidable. So I don't think -- the Third Circuit didn't meant do that. I don't blame the Third Circuit for doing that. It's just a consequence of

how the Third Circuit ruled.

Therefore, when we were looking at this, from LTL's position, we're now looking at an agreement, a funding agreement which is the most valuable asset that has been rendered void or voidable. And so we came up with the solution to try to rectify the situation, get -- get sufficient funding for the claimants, and turn to a plan, a support agreement with J&J where they would provide enough liquidity to come up with the -- a solution to the issue which is embodied in the proposal.

BY MR. JONAS:

Q So when you gave up funding agreement one and you entered into funding agreement two, you were trying to take care of my clients? Is that what you're saying?

A Yes, absolutely, because we did not give up funding agreement one. Funding agreement one became void or voidable and unenforceable, particularly the J&J guarantee as a result of the Third Circuit decision.

What we did, we took that situation and tried to come up with a situation for the benefit of all parties. So we exchanged an unenforceable funding agreement with an enforceable funding agreement with Holdco, and a plan support agreement that would provide, you know, $8.9 billion in a settlement that has been -- that has the overwhelming support of claimants.

A That is true.
Q And your determination was based on a footnote in the Third Circuit's decision, right?
A Well, that was part of it. It was the entire decision. But the footnote was a good marker for that, yes.
Q And let me ask you, going back to when you first did funding agreement one because again, that was the most valuable asset, right?
A Yes.
Q You knew how important it was, right?
A Yes.
Q You knew it was really important to my clients, right?
A We understood it was important for everyone.
Q So when you negotiated funding agreement one, you hired great counsel, Jones Day, right?
A We did.
Q Yeah. And you really put a lot of effort into making sure that funding agreement one would be a great agreement. It would always be available to our clients, right?
A Well, in bankruptcy, yes.
Q I thought you said the funding agreement was available in and out of bankruptcy.
A Well, it's a little complicated because the funding agreement is really in two parts. There's the part where JJCI has, you know, has given up its agreement to fund up to its

value. And then there's the J&J basically backstop. That backstop really was only intended to deal with things in bankruptcy.

The J&J -- the JJCI portion of it, you know, is really a function of the fact that we filed the divisional merger and we had to take all the assets, or we wanted to have the assets of JJCI.

Q Did J&J tell LTL that it would not honor the funding agreement outside of bankruptcy after the Third Circuit's decision?

A No, it didn't get that far because we came to a resolution. We understood the funding agreement was void or voidable. We never said to J&J well, you must pay us or else. We both came to the conclusion, and a consensus, that the funding agreement was void or voidable, possibly unenforceable. There's a material risk.

And so what we did was we negotiated a solution. We came to a consensus on a solution to it before having a need to how J&J, you know, refused to fund anything.

Q Did you go to the TCC or any of the talc claimants, the beneficiaries of funding agreement one and say hey guys, let's talk about this. We've got to figure out a strategy against my counter party J&J because I don't want to lose $60 billion. Did you talk to any of these folks who were the beneficiaries about what to do?

A I did not. I had my own counsel. And I did my own review and came to my own conclusions.
Q So you thought it was best for you, yourself, to make decision for tens of thousands of talc victims as to how to handle the funding agreement?
A I relied on, again, discussions I had with my counsel. And we came -- and this is the path we chose.
Q Did the board or anybody at LTL examine whether maybe there was a claim against your counsel to what negotiated the first funding agreement?
MS. BROWN: Your Honor, I'm going to object to the extent that implicates legal advice and exploration of legal claims. I don't think that's proper.
THE COURT: Overruled.
THE WITNESS: I think I did answer this in the deposition. So again, having been involved in putting together the funding agreement, I was aware of these issues. There was -- it was clear to me and to others that this was something that was completely unforseen and would be unforseen by all parties. And there was no question that there was no need to try to look into filing a lawsuit against counsel.
BY MR. JONAS:
Q I think everybody's going to get sick of me in about 30 seconds. So I'm going to ask one last question to wrap it up and see if I have it right. Maybe I do, maybe I don't. My

questions to clear something up.

Earlier this morning, sir, you were asked a number of questions about funding agreement one and funding agreement two. Do you remember those questions?

A I do.

Q Okay. And numbers were put on those funding agreements, like $61.5 billion and the like, right, sir?

A Yeah, I recall that.

Q Okay. But the truth is, sir, that the value of the funding agreements are driven by the talc liability, correct?

A It is. It would be part of that, the value.

Q Okay. And so, for example, J&J'S liability is limited to J&J's exposure for the talc liability, correct?

A That would be the -- right. So when you say -- I think the issues --

UNIDENTIFIED SPEAKER: (Indiscernible)

THE COURT: Leading?

UNIDENTIFIED SPEAKER: Both leading, yes.

THE COURT: Try to avoid the leading if possible.

MS. BROWN: I will, Your Honor. Just trying to move it along. But I will, I'll ask an open-ended question.

BY MS. BROWN:

Q Mr. Kim, you were going to answer that?

A Yes. The opening question. Yeah, the amount of money we're talking about, of course, is the maximum that is, not the

exposure, of liability. So it's the amount that they agreed to fund not any, you know, what the exposure. I think that's what the question that you're getting at is.

Q Well, and in terms of the liability, that was the same under funding agreement one -- in terms of whether -- do you have a view on whether or not the liability changed under funding agreement one and funding agreement two?

A Well, so the talc liability, so I, yeah I see. The talc liability is enormous. We don't have an aggregate number for it, but it is, you know, huge. I think what I would do is refer to all the testimony I gave in the prior proceeding about the liability and adopt that here.

That liability, if anything, has gotten bigger. We know that after a year of being in bankruptcy, we have at least -- I think it almost doubled from what we know from unknown claims. So what I would say is that the liability itself is even much larger than it was when the first bankruptcy was filed.

Q And how does that liability relate to the value of the funding agreement?

A Well, at the end of the day, we believe that we have sufficient funds to meet the liability except for the -- so we believe we're not insolvent, but we do believe that we are in financial distress because of the magnitude of the liability, the wild and unpredictable verdicts, the cost of the litigation, which is ever increasing.

Q So putting aside the liability and the value of the funding agreements, are you familiar with commitments to fund that J&J and LTL made in the first bankruptcy and in this bankruptcy?

A I am.

Q Okay. And unlike the amount of the liability, have the commitments changed from the first bankruptcy to this bankruptcy?

A They have. They're changed in terms of where they're coming from.

Q And was the commitment in the first bankruptcy approximately $2 billion?

A Oh, well, the commitment of $2 billion was the original amount that was going to be put into a qualified trust fund. And that's changed dramatically from the $2 billion. Now, it's the $8.9 billion in the bankruptcy.

Q Okay. And so the commitment has gone from 2 billion to 8.9 billion now, correct?

A From the first qualified fund in the first bankruptcy to what is now committed in the second bankruptcy has increased to $8.9 billion.

Q Okay. Thanks very much, Mr. Kim.

MS. BROWN: I have no further questions.

THE COURT: Thank you.

Any redirect?

these entities at about $30 billion.

Next slide, please.

So on the fraudulent transfer allegation, you know, we've heard from the beginning that this is the largest fraudulent transfer that's ever occurred in the history of the United States. But we don't believe there's a basis to find either an actual or a constructive fraudulent transfer. I don't think there's any question based on the financing arrangements that are in place that the debtor has sufficient funding or sufficient resources to fund the agreed plan. And in that case, both the funding agreement and the J&J support agreement are available to provide funding. Again, as I've said before, we believe the debtor has sufficient asset value to cover talc costs outside of bankruptcy, again based on the assets of HoldCo and the debtor.

And then the other point I wanted to make here -- and, obviously, there's a major disagreement over this, but you heard Mr. Kim answer many, many questions in response on this issue. We believe -- the debtor believes that there was a serious question, and I think Mr. Kim characterized it as a material risk, that in the wake of the Third Circuit ruling the funding agreement would no longer be enforceable.

And, you know, fundamentally, the thinking is that the way the court ruled was not reasonably foreseeable. It had the effect of frustrating the central purpose of the funding

agreements. We don't believe it was reasonably foreseeable to affect -- to expect that the Third Circuit would find that the funding agreement had the exact opposite effect of what it was intended to do.

It was intended to facilitate a bankruptcy. It wasn't intended to make a bankruptcy unavailable. Yet, that's where we ended up.

THE COURT: Well, let me ask this --

MR. GORDON: Yeah.

THE COURT: -- Mr. Gordon. One of the arguments that's been put forward is that the funding agreement clearly provided for a mechanism of payment outside of a bankruptcy.

MR. GORDON: Correct.

THE COURT: So how can it not be reasonably foreseeable to have a situation where the debtor is outside of a bankruptcy as a result of a dismissal of the case by this Court or the reversal? How is that not foreseeable, and why would it make it void or voidable?

MR. GORDON: Well, the point I'm making -- that's a really good question, Your Honor. The point I'm making is I'm not saying that a dismissal was not reasonably foreseeable. Obviously, we -- the --

THE COURT: Well, I didn't see it coming, but go ahead.

MR. GORDON: Well, I'm just saying -- I'm talking

about in a more general way. For example, the case -- let's just say we were still here three years later and weren't making much progress. You could see the case being dismissed. The debtor might dismiss at some point, saying there's just no hope.

So we -- there was a recognition that a dismissal could occur. The point I'm making is that nobody could have expected that the dismissal would be based on the existence of an agreement that was intended to facilitate the bankruptcy. And that's, to us, what raised a material question as to whether the fundamental purpose of that agreement was frustrated, affecting its enforceability, whether there was really any consideration received, for example, by J&J in making its commitment, because its commitment was intended to facilitate a bankruptcy.

And Your Honor may remember this, but I remember it very well. In North Carolina, we were always being criticized in these funding agreements on the basis that what's to stop the (indiscernible) from dividending all its assets up to the parent. And one of the big justifications or thinking behind this funding agreement or the J&J support was just to take that issue off the table.

And, again, it was to facilitate a filing to get parties beyond concerns about fraudulent transfer and then move forward to try to confirm a plan. And the tables were

completely turned on us where the Third Circuit came back and said that's exactly the opposite of what you intended. In fact, it's what disqualified you. We recognize the irony in our opinion, but that's where we are based on financial distress.

Did I answer your question, Your Honor?

THE COURT: It's an answer.

MR. GORDON: I wasn't asking you to comment whether it was a good answer, of course.

You know, I think the -- you know, the other thing I want to say about this is one reason we're getting into this point is I think it takes off the table the idea of there's some problem with reasonably equivalent value. Because from our perspective, we weren't just in a situation where we were saying we're just giving up something for nothing. We had a concern that there was a material issue about enforceability. And in return for eliminating that risk, we got a new funding agreement and a new support agreement which provided the debtor with the ability, in our view, to satisfy claims both inside the bankruptcy and outside the bankruptcy.

And so, from our perspective, there was sufficient value to pay claims both before and after. And I should comment on that. I should pause and comment for a second, because there were a lot of questions today about a $60 billion funding agreement versus a $30 billion funding agreement, and

whatever, I can't do the math this late at night in claims for a fraudulent conveyance. And as Mr. Jonas pointed out, under 548, there's two provisions in there. They don't have to prove insolvency under 548, I'm going to get it wrong now, --

THE COURT: A.

MS. RICHENDERFER: 8(2)(a). Thank you, Your Honor. They don't have to prove insolvency. You have to prove intent and I think we've already heard an awful lot because they intended to get rid of that agreement. Mr. Kim was very clear. They intended to get rid of that agreement and they did. They got rid of that agreement. May have been based on bad, legal advice. I don't know because I just don't understand how void or voidable, I mean if it's voidable, that means that one of the two parties has to take a step to make a void. If it's void, then when did it become void? Was it void ab initio? Did it become void because the Third Circuit said you're not suffering financial distress. I don't know when allegedly it became void. But if it's voidable, one of the two parties has to take a step and Mr. Kim doesn't define when that occurred, just people were talking about it and then next thing you know there's no agreements that are in place.

These are all issues that go to the success on the merits, Your Honor. They go to issues that will probably be in front of this Court maybe on May 3rd, I don't know. I guess it depends on how fast we all can move on appropriate motions to

dismiss. But those are issues that are going to be back in front of this Court. But when LTL 2.0 came in, it had a lot of money. And the difference is this, Your Honor. If we assume, and I'll assume for the sake of argument, that they have 60,000 claimants all tied up because their attorneys are going to send in ballots signing their names. That's what happened in Imerys and we ended up with a huge amount of votes that gone thrown out for one reason or another. One being absolutely no proof of the claimant themselves, 15,000 of them having a claim and other votes got thrown out because multiple law firms were submitting ballots and it wasn't that the claimants were signing two ballots, it was at two different law firms were submitting a ballot for the same person.

So let's just assume that they do have 60,000 claims. I don't know if that's claimants tied up. I don't know if it's 75 percent or not, Your Honor. I really don't know. Because of the overwhelming number of claims that Mr. Watts has acquired since the first filing. I don't know whether or not anybody else has equally acquired the same number of claims.

But there's also the State Attorney Generals has substantial claims. And I heard reference made to claims against Imerys and Cypress. Well, I'll tell you this, Your Honor. There have been adversary proceedings pending since, see 2019 is when Imerys filed so probably 2020, adversary proceedings by Imerys against Johnson & Johnson for

indemnification claims and also seeking coverage under these insurance policies that are part of the monies that may or may not end up in the pot here for this case.

And I will tell you that both Imerys and Cypress also believe they have huge indemnification claims against Johnson & Johnson. And I believe it was one of the counsel for the debtor, Your Honor, made a comment about how well, you know if claims get covered in the Imerys case. Your Honor, I went back and I looked and of the 12 primary law firms, that have signed PSA's, all but two of them either had no votes submitted in the Imerys case or had their votes thrown out because there were other law firms claiming the particular claimant as their client.

So I don't see that there's going to be a lot of overlap between people that are going to try to get paid through the Imerys trust and people that are going to try to get paid through the J&J or the LTL trust. And we started off this case back in October 2021 with a pot of money that I will admit is larger than what I can even comprehend. We now in LTL 2.0 have a pot plan, meaning here it is, here's the cutoff. So all of you tort claimants, all you State Attorney Generals, anybody seeking indemnification from us, insurance carriers, Blue Cross, Blue Shield, here it is. Divvy it up.

There's a huge difference between the two. And that's the problem here, the pot plan. There might still be

money here but they gave away an awful lot while they were still in bankruptcy and I think that's just the most important point, one of the most important points from my office is that what was the conduct while they were still in bankruptcy. And we were relying on them in their capacity as fiduciaries for the debtor's estate.

This time around, Your Honor, not only do we have the debtors coming into the Court with that hanging over their heads, we have the debtors coming to the Court with the Third Circuit's opinion hanging over their heads. I will never comprehend how they believed that that gave them permission to get rid of the 2021 funding agreement, how they thought that Judge Ambro was telling them to do that.

And maybe when this is all over and done with we can have a drink sometime with Judge Ambro and see if that was really what he had in mind when he wrote that opinion and put (indiscernible) got in there.

(Laughter)

MS. RICHENDERFER: I didn't know I was going to get such a laugh on that one.

(Laughter)

THE COURT: I'll ask at the Third Circuit conference coming up.

MS. RICHENDERFER: Okay, Your Honor. And then when all this is over, they'll have a drink with you. Then you can

tell us what Judge Ambro says. But I know that Footnote 18 talks about fraudulent conveyances, which to me is saying don't do it. But I guess minds can differ, that's why lawyers have jobs, because we all disagree about how to interpret things.

It's beyond challenge that funding agreement one was available in or outside of bankruptcy. Mr. Jonas already told you, I think, about the colloquy that went forth between, it was Judge Ambro who asked the question, and appellate counsel for the debtor at first said that it wasn't available outside of bankruptcy.

And then one of the co-counsel whispered in his ear and he went up and he corrected himself. And Judge Ambro said yes, I know that. I mean, Judge Ambro asked that question knowing the answer, and he got the wrong answer and then got corrected. So that agreement was available in or out of bankruptcy.

Your Honor, the plan. And Your Honor saw me asking questions of Mr. Kim about this. A plan in a case like this is going to be 50, 60, 70 pages long. That's not even including TDP's, that's not even including the trust agreement. I know Your Honor is very well aware of this whole process. You've had asbestos cases. You know how long these things are. You know how heavily, heavily, heavily negotiated they are. Because this means real dollar and cents.

And to take that term sheet and get it into a real

plan that each one of the law firms assigned a PSA is going to say okay, that's it, that's what I agree to, that's what I agree to support, we're a long way from that point, Your Honor. We are a long way.

You know, I come from the Emerest (phonetic) case where here we are going on, it will be four years. It is four years, that's right. It was in February of 2019 that it filed.

Nowhere near it. It's the details. The devil is in the details in these plans. And that's where reasonable people differ. And so the time line that they set out, I'd love to see a plan on May 14th. I have a feeling though it's going to look like what I saw in Emerest, which was plan number one that was so bereft of details that you didn't even know where to begin in drafting your objection to it. And it wasn't until we got to the tenth amended plan that it finally was in a state where it could go out for solicitation.

So I believe there will be something that we will see filed on May 14th. But I really question whether it is going to be something that all of us, including Your Honor, will feel is appropriate to send out to the claimants for them to vote on. I mean, we haven't even had major discussions like okay, how are they going to do the voting. I mean, that can take days of arguments about do you send it to their attorneys, how do you make sure that they get it, how do you make sure that if they want to vote themselves, they get to vote.

So Your Honor, I'm just saying all of this because I think that there's been a heavy emphasis by the debtor on let us go forward, we're going to get this wrapped up like this. And that is not going to occur here. Reality -- I just want to bring a sense of reality into all of this.

And I go back to my opening statement, Your Honor. There are four elements that need to be proved here. And most of what I just said goes to element number one, success on the merits. I haven't heard anything discussed as to why J&J and its other nine debtor affiliates get a channeling injunction or why they get a third party release, whatever it ends up being.

And I go to the fourth element which is the public interest. And the public interest is in not allowing opinions of the Third Circuit Court of Appeals to be ignored in this fashion. To be twisted and turned around in this fashion. And it is not in holding up people who have not been able to go forward with their claims in the meantime.

The details on the claims I've left up to the Committee and plaintiff's counsel that are here to discuss. But the public interest is not allowing J&J to keep them again from their day in court. Thank you, Your Honor.

THE COURT: Thank you, Ms. Richenderfer. So you can come up, whoever is next. It is 6:36. I am telling you all now, and adjust your arguments accordingly, I am adjourning at 7:30. I owe it to my staff for their health and their safety.

Let's get it done.

MR. BIRCHFIELD: Good evening, Your Honor. Andy Birchfield, Beasley Allen. I know it's late in the day and I appreciate you giving us this opportunity to be heard. J&J began the day, LTL began the day denigrating me personally in their opening, and my law firm. And they ended their day in their closing denigrating me personally and my law firm. Why? To what end? What relevance does that have to this proceeding?

I think there we may have evidence of true frustration of purpose. It's not me. It's not me. There is a committed team, a leadership team of a large member of lawyers and we have held together and we have held firm. And because we have held together and we have held firm that frustrates J&J's purpose of using the bankruptcy process to coerce plaintiffs to accept deeply discounted values.

And as part of the presentation you were given some quotes from my deposition. Part of those, a significant portion of that dealt with a proposed agreement, a proposal, a draft proposal from September of 2020. And it was suggested that that proposal was for all ovarian cancer claimants for 3.25 billion. I don't know what relevance, or I don't know where 408 is here. But you will have the deposition and you will have the agreement. And I'm going to --

I urge you, Your Honor, look at the agreement. See if the total payments under that agreement are 3.25 or 5.5